



THE NEXUS BETWEEN MENTAL HEALTH AND THE LAW

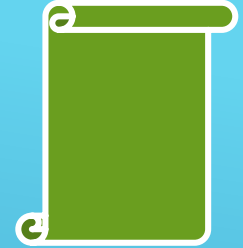
Nancy B. Cohn, Ph.D.
Forensic Psychologist

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Forensic Mental Health Assessment (FMHA)

- ▶ Whose purpose is to help with better-informed decision making in a legal context
 - ▶ The process by which mental health professionals conduct evaluations for the court
 - ▶ A specialty practice area that has developed significantly over the past three+ decades
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Journals



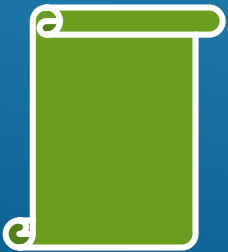
Behavioral Sciences and the Law

Criminal Justice and Behavior

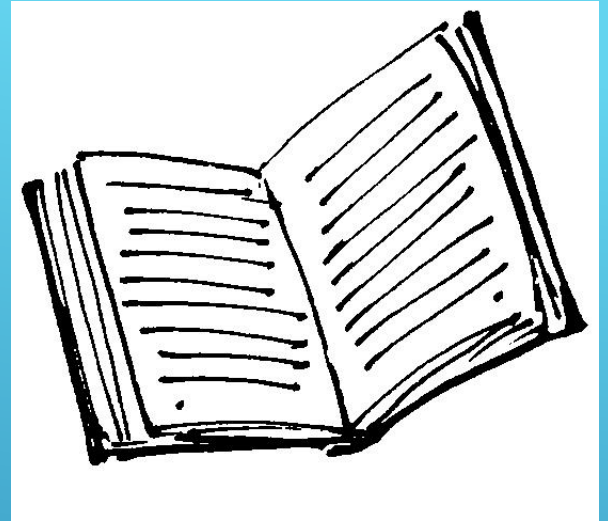
Journal of American Academy of Psychiatry and Law

Law and Human Behavior

Psychology, Public Policy and the Law



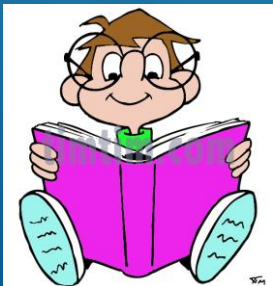
Books



Psychological Evaluations for the Courts

Best Practices in Forensic Mental Health Assessment (series)

Testifying in Court: Guidelines and maxims for the expert witness





Specialty Training Resources

Graduate school-based psych-law degree

Postdoctoral Psychology Fellowship

Forensic Psychiatry Fellowship

Continuing education [AAPL, AP-LS]





**American
Psychology-Law
Society**

PROFESSIONAL SOCIETIES

American Psychology-Law Society (division 41 of APA)

American Academy of Psychiatry and the Law

Forensic Mental Health Association of California



Formal Training Programs



MD-JD

Ph.D.-JD

Postdoctoral fellowship in forensic psychology

Post-residency fellowship in forensic
psychiatry





Sources of Authority in FMHA

LAW

ETHICS

SCIENCE

STANDARDS OF PRACTICE

DIFFERENCES BETWEEN CLINICAL AND FORENSIC EVALUATIONS

Clinical

Forensic

Who is the client?

the Patient

the Court

Privilege of person evaluated

therapist-patient

attorney-client
and work-product

Area of evaluator expertise

content + therapeutic
technique

content +
forensic evaluation
standards

Cognitive set of evaluator

supportive, accepting
warm, empathic
advocate for person

neutral, objective,
detached
advocate for issue



Structure of evaluation

client structured, less

more structured, and by evaluator

Completeness of eval

based on client info

more complete, collateral info

Outcome Standards

diagnosis for therapy

forensic criteria for purposes of legal adjudication

Nature of process

rarely adversarial

frequently adversarial

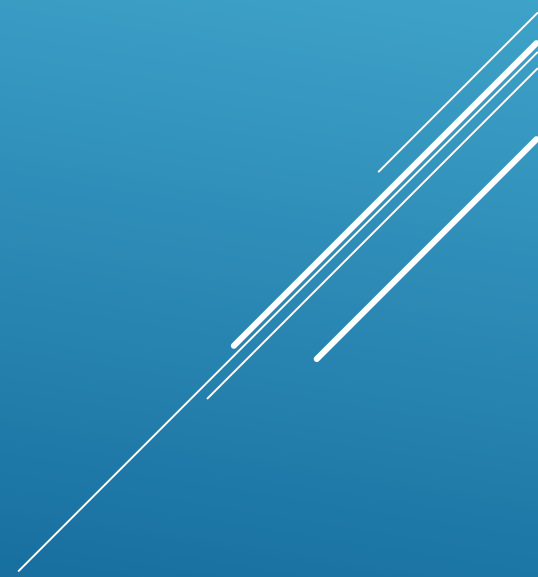
Product/Outcome

aid/benefit patient

aid/benefit legal process




SELECTED TYPES OF FMHA IN UTAH



Competency to stand trial

(77-15 et seq Utah Code Annotated)

(and associated issues... Adkins, competency to be executed, to consent to treatment for restoration and maybe others—but NO competency to serve a sentence)

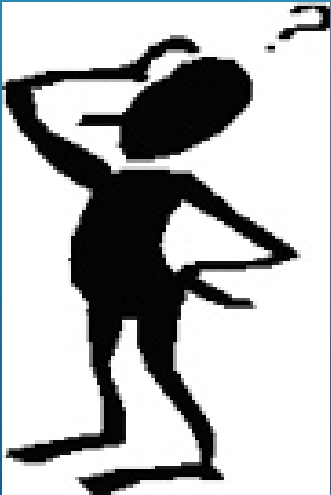
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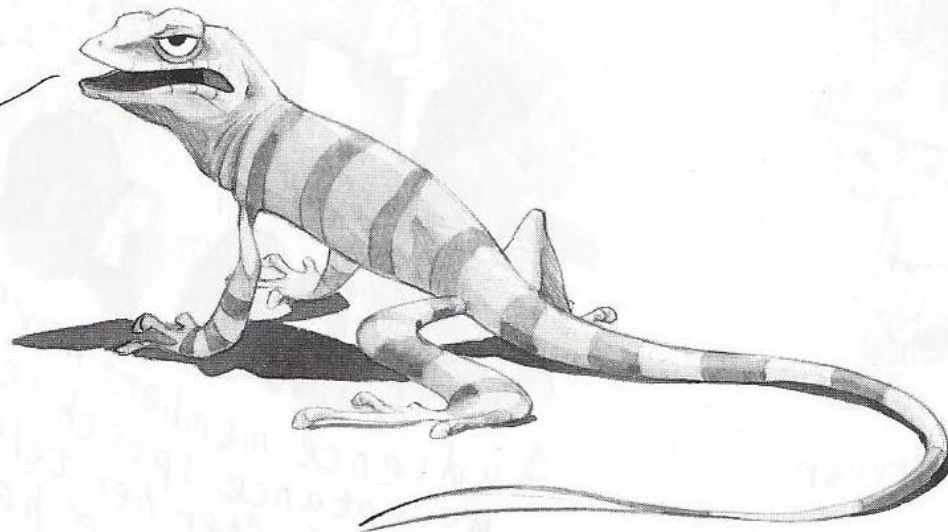


Diminished Capacity/Insanity

(76-2-305, 77-14-4 Utah Code Annotated)



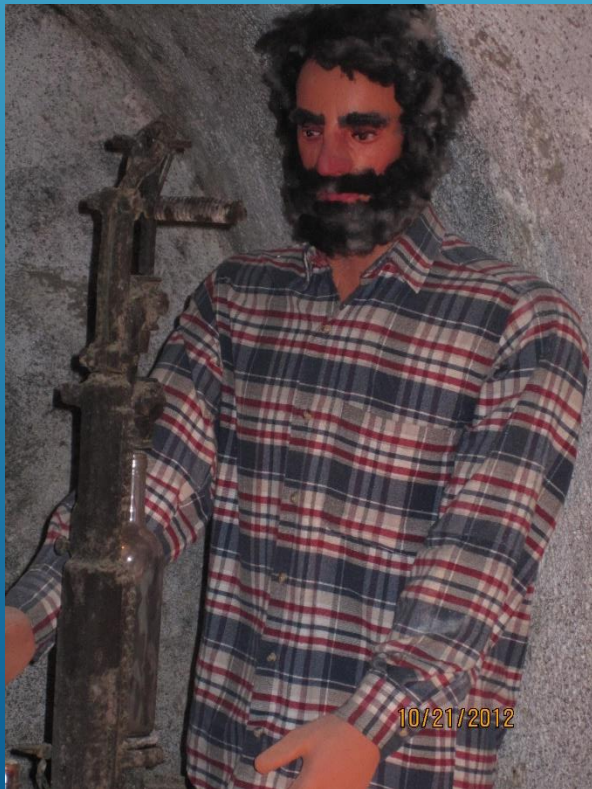
THAT'S RIGHT, BLAME
THE LIZARD BRAIN.
IT'S ALL MY FAULT.



W. McMail

Special Mitigation

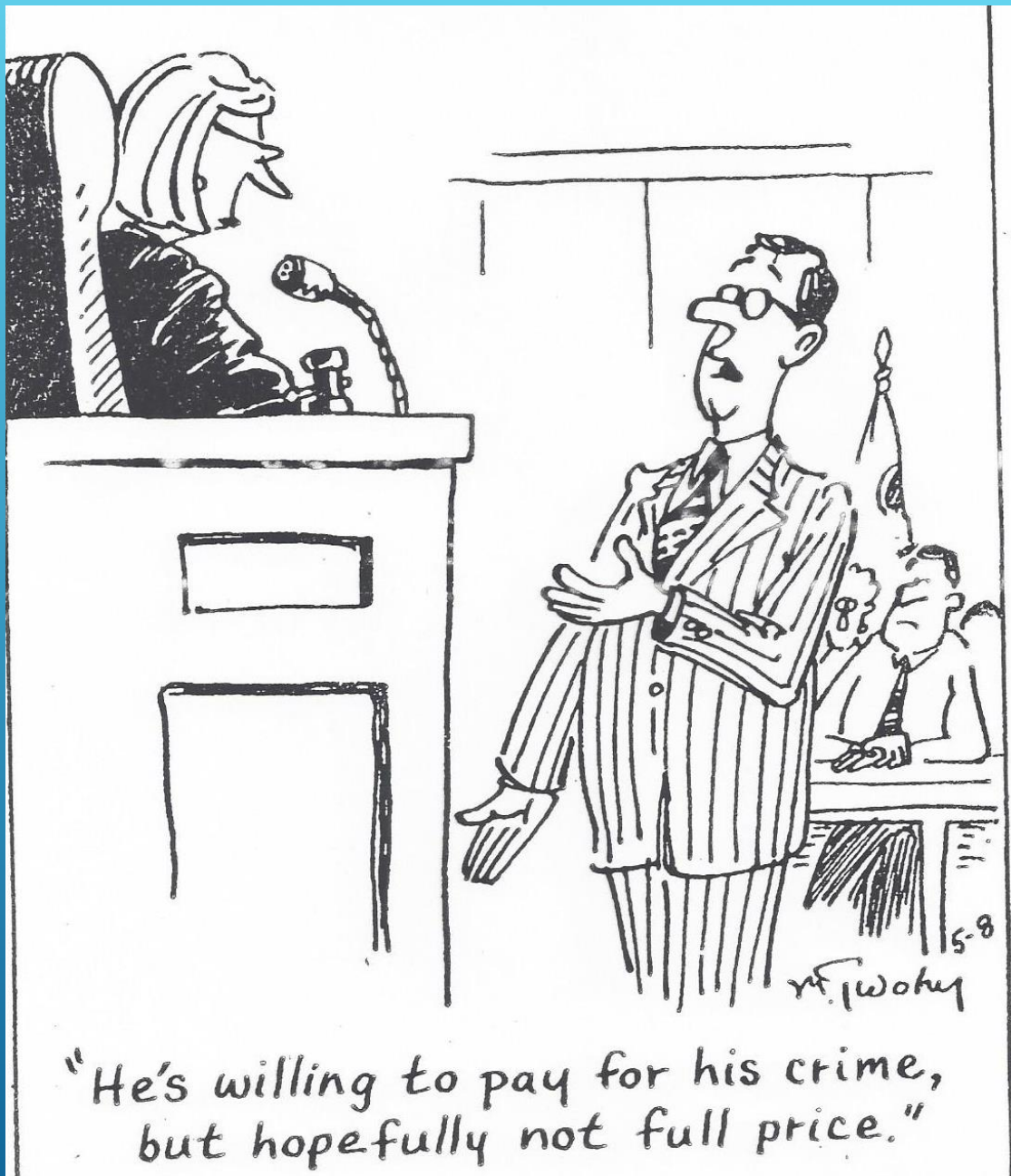
(76-5-205.5 Utah Code Annotated)



Guilty With a Mental Illness [post-adjudication]

77-16a-103 Utah Code Annotated

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"He's willing to pay for his crime,
but hopefully not full price."

Risk Assessment





01/02/2012

Involuntary Commitment

(62A-15-631 [and others] Utah Human Services Code)



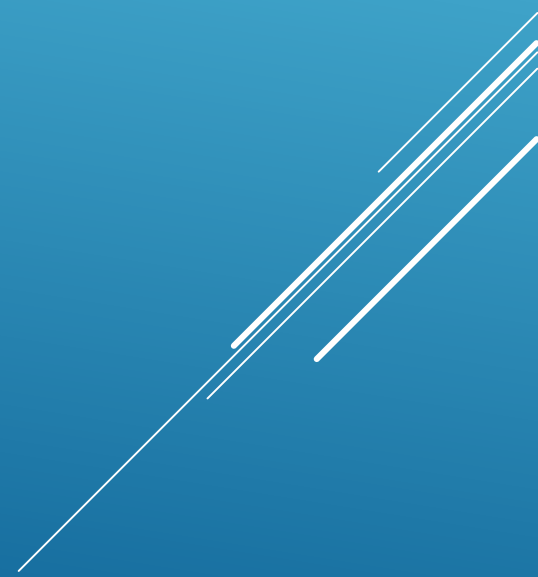
CUSTODY, VISITATION, PARENT-TIME EVALUATIONS



Search ID: jman40
I DON'T CARE WHICH PARENT I GET
AS LONG AS IT'S THE SAME ONE
THAT GETS THE PLAYSTATION.

Approach to the evaluation is determined by

- The psycho-legal issue
- The psychological capacities required by the specific legal issue





So, how do you figure out who to have do an evaluation, and how do YOU evaluate an examiner's report?





The Elephant in the room

Forensic examiner list from DMH?

Yes, but not comprehensive...

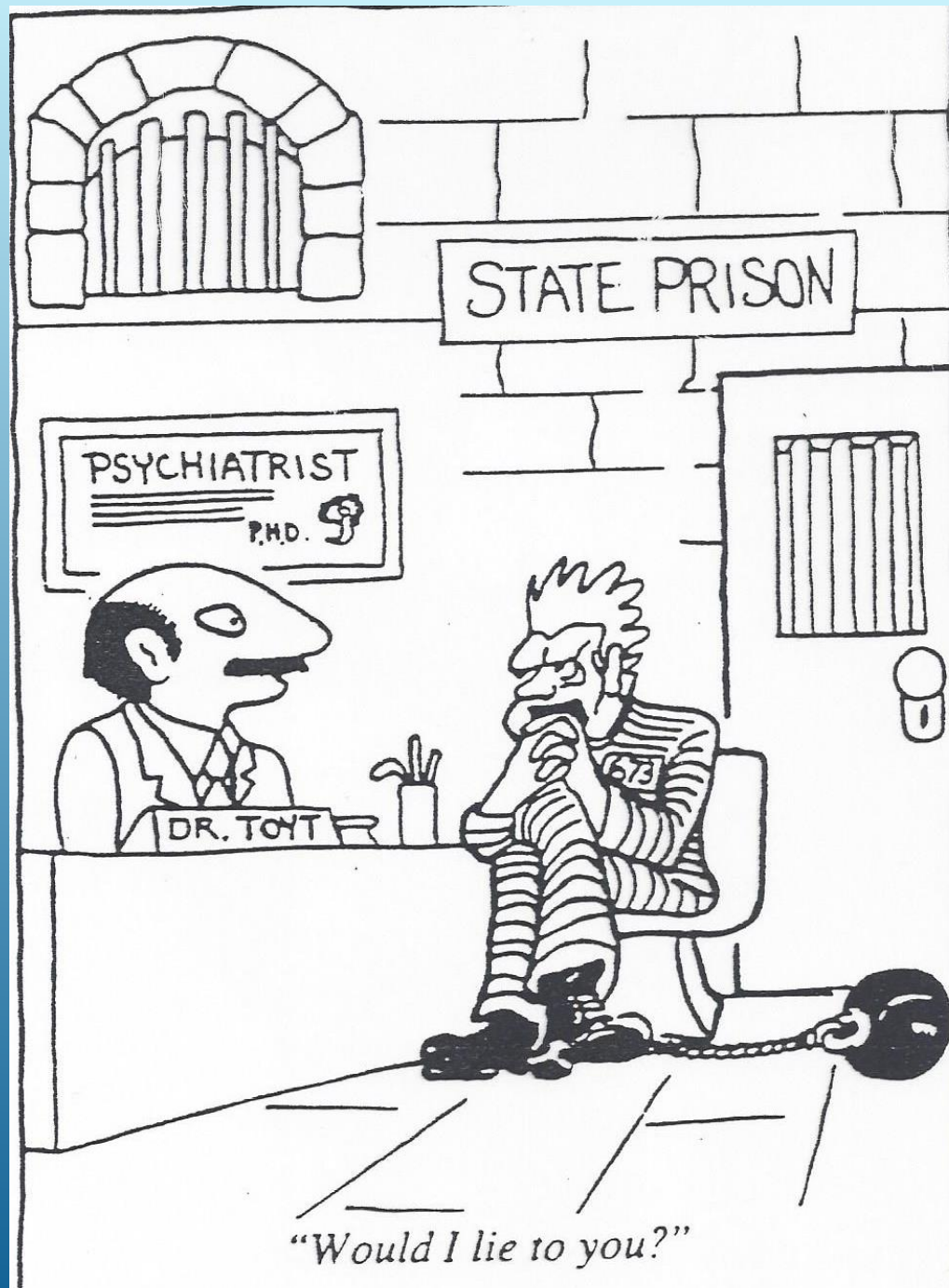
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Specialized Education, Training, Experience



Malingering: What is it and why do we care?



"Would I lie to you?"

Malingering is the deliberate production or exaggeration of [psychological] symptoms for secondary gain.

The assessment of malingering is a critical component of a forensic evaluation, where external incentives can be substantial.

Malingering was removed from the index in the DSM-5, but remains as a “V” code and the criteria for when to consider malingering remain unchanged.

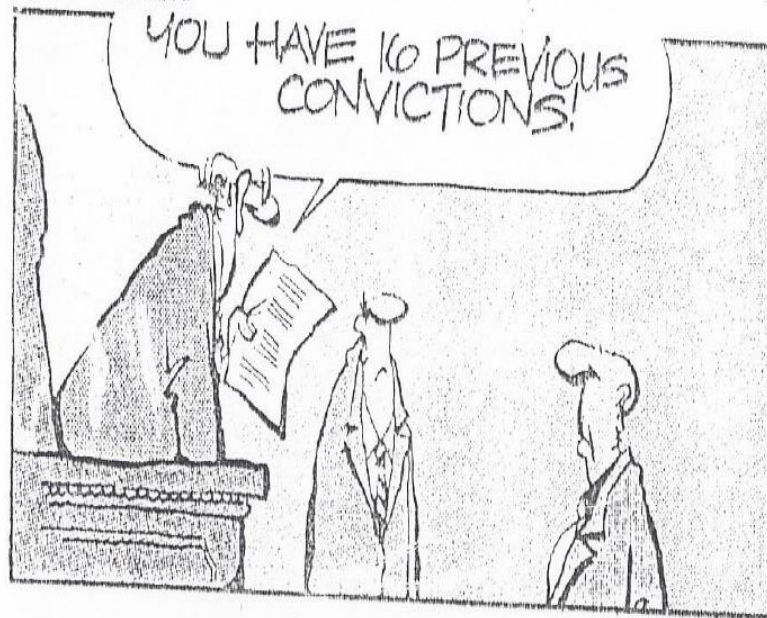
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For FMHA, the first prong is whether someone is mentally ill or intellectually disabled, so diagnostic issues are paramount

The most important aspect of the assessment is RECORDS and COLLATERAL INFORMATION

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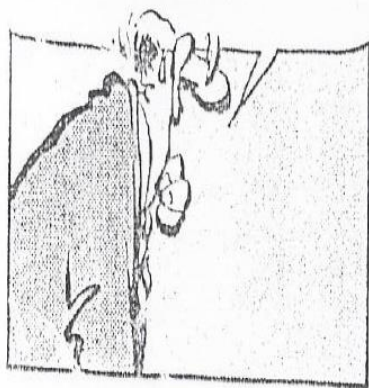
HERMAN



BY JIM UNGER



THIS THROWS A NEW COMPLEXION ON THE WHOLE CASE.




I'M ORDERING A PSYCHIATRIC EXAMINATION.



REQUIRED TO ADDRESS BY STATUTE IN UTAH:

...any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.

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PSYCHOLEGAL REASONING

Does the examiner tie reported symptoms to their observations and to the diagnosis?

Does the diagnosis logically tie to the functional (in)abilities associated with the issue under evaluation?

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“He’s delusional so he must be incompetent”



“He has a diagnosis of schizophrenia and was therefore unable to form the intent to steal the computer. He just wanted some cigarettes”



10/21/2012

"She is depressed and pled guilty so she must be guilty with a mental illness...and now meets criteria for sentencing"

Not so much...





"He has a long history of psychotic episodes with hospitalizations, is currently not bathing, eating, and is refusing medication. In my opinion, he is currently mentally ill and..."

YES!!!



Meets the criteria for a finding of guilty (with a mental illness) and currently mentally ill

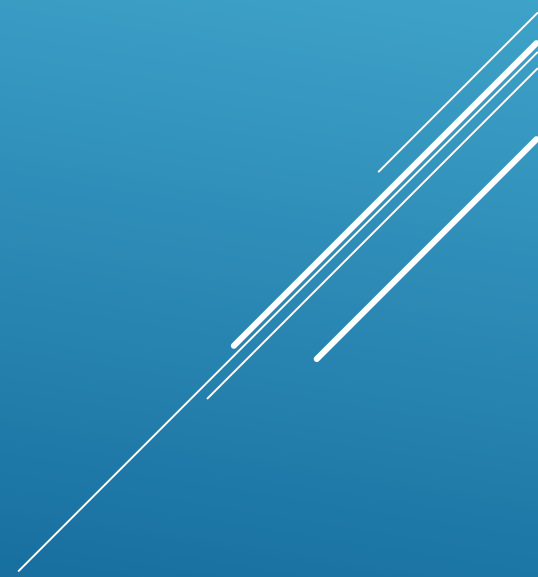




To Take Away:



BROAD, FOUNDATIONAL PRINCIPLES OF FMHA ACROSS DIFFERENT KINDS OF LEGAL QUESTIONS:



Differences between clinical and forensic evaluations

Skill set requirements are different for forensic evaluators

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**FMHA are guided by legal, ethical,
scientific, and practice literatures**

**FMHA are guided by impartiality of the
examiner**

There are standards for FMHA that are reasonably well established

Not all FMHA are alike: know the relevant issues to better evaluate the evaluations

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The Nexus Between Mental Health and the Law